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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EILEEN PEVIANI on Behalf of
Herself and All Others Similarly
Situating,

Plaintiffs,

v.

NATURAL BALANCE INC.

Defendant.

Case No: '10CV2451 H BGS

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF CALIFORNIA'S:**

UNFAIR COMPETITION LAW;

**FALSE ADVERTISING LAW;
AND**

**CONSUMER LEGAL REMEDIES
ACT**

DEMAND FOR JURY TRIAL

1 Plaintiff Eileen Peviani, on behalf of herself, all others similarly situated,
2 and the general public, by and through undersigned counsel, hereby sues
3 Defendant Natural Balance, Inc. (“NBI”) and, upon information and belief and
4 investigation of counsel, alleges as follows:

5 6 **INTRODUCTION**

7 1. NBI falsely markets its dietary supplement “Cobra Sexual Energy”
8 (“Cobra”) as having beneficial health properties despite a lack of scientific
9 evidence substantiating such claims.

10 2. Plaintiff paid for Cobra during the Class Period defined herein, saw
11 and believed these claims, and was damaged as a result.

12 3. Plaintiff brings this action challenging NBI’s claims relating to Cobra
13 on behalf of herself and all others similarly situated, under California’s Unfair
14 Competition Law, False Advertising Law, and Consumer Legal Remedies Act.

15 4. Plaintiff seeks an order compelling NBI to (1) cease marketing Cobra
16 using the misleading tactics complained of herein, (2) conduct a corrective
17 advertising campaign, (3) restore the amounts by which NBI has been unjustly
18 enriched, and (4) destroy all misleading and deceptive materials.

19 20 **JURISDICTION AND VENUE**

21 5. This Court has original jurisdiction under 28 U.S.C. §1332(d)(2) (The
22 Class Action Fairness Act) because the matter in controversy exceeds the sum or
23 value of \$5,000,000 exclusive of interest and costs and more than two-thirds of the
24 members of the Class reside in states other than the state of which Defendant is a
25 citizen.

26 6. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because
27 Plaintiff suffered injuries as a result of NBI’s acts in this District, many of the acts
28 and transactions giving rise to this action occurred in this District, and NBI (1) is

1 authorized to conduct business in this District and has intentionally availed itself of
2 the laws and markets of this District through the promotion, marketing,
3 distribution, and sale of its product in this District; (2) resides in this District; and
4 (3) is subject to personal jurisdiction in this District.

5 6 **PARTIES**

7 7. Defendant NBI is a Delaware corporation with its principal place of
8 business in Englewood, Colorado, and is the producer and manufacturer of Cobra.

9 8. Plaintiff Eileen Peviani is a resident of California and purchased
10 Cobra for her own and household use and not for resale in California during the
11 Class Period defined herein.

12 13 **FACTUAL ALLEGATIONS**

14 9. Plaintiff purchased Cobra this year from the CVS Pharmacy located at
15 683 Lomas Santa Fe Drive, Solana Beach, CA.

16 10. Throughout the Class Period, NBI has used various methods to
17 represent the purported medicinal, healthful, and/or beneficial qualities of Cobra.
18 Such representations and claims, however, are unsubstantiated by scientific
19 evidence.

20 11. Absent the misstatements and fraudulent claims described herein,
21 Plaintiff would not have purchased Cobra.

22 **The Composition of Cobra**

23 12. Cobra primarily consists of a “proprietary blend” of small amounts of
24 extracts from herbs, roots, and other organic substances, some of which are
25 purported to have an effect on the human body.

26 13. Cobra, by means of its “proprietary blend,” claims to increase “sexual
27 energy” in the human body.

28 14. None of the ingredients in Cobra, however, has been found by any

1 scientific human study to increase sexual energy.

2 15. While a few unreplicated scientific studies suggest ingredients in
3 Cobra's "proprietary blend" may—in appropriate amounts—benefit sufferers of
4 certain specific conditions, many of the ingredients in Cobra have never apparently
5 been studied, or shown to have any effect on the human body, much less to
6 increase "sexual energy."

7 16. Further, consuming such random herbs and herbal extracts presents a
8 risk of an allergic or other adverse reactions without any offsetting benefit.

9 **Cobra's Yohimbe Content Poses Grave and Undisclosed Risks to Human**
10 **Health**

11 17. Yohimbe extracts in Cobra present several added risks not stated on
12 NBI's Cobra label:

13 18. The National Institute of Health ("NIH") strongly cautions that
14 sufferers of anxiety and/or depression should not use yohimbe: "Yohimbe might
15 bring out manic-like symptoms in people with bipolar disorder or suicidal
16 tendencies in individuals with depression."¹

17 19. The NIH further warns against yohimbe for use by individuals
18 suffering from diabetes, because the substance may "interfere with insulin and
19 other medications used for diabetes and cause low blood sugar." *Id.*

20 20. Like early antidepressant drugs, yohimbe extracts can lead to serious
21 and in some cases life-threatening conditions when ingested with any of the many
22 foods containing significant amounts of the monoamine tyramine.

23 21. Both yohimbe and these first generation antidepressants are referred
24 to as Monoamine Oxidase Inhibitors.

25 _____
26 ¹ *Yohimbe* from The National Institute of Health
27 (available at
28 <http://www.nlm.nih.gov/medlineplus/druginfo/natural/759.html>)

1 22. MAOIs, by inhibiting monoamine oxidase, are also responsible for the
2 reduction in the breakdown of tyramine, an amino acid in many foods. The
3 retarding of this process by MAOIs leads to a build-up of tyramine in the body,
4 causing high blood pressure and severe hypertension.

5 23. The dangerous combination of MAOIs and tyramine can also result in
6 stroke and cardiac arrhythmia.

7 24. As a result, those prescribed MAOIs are warned to avoid these and
8 other types of tyramine-heavy foods.

9 25. This warning, from the National Institute of Health U.S. Library of
10 Medicine, is typical:

11 You may experience a serious reaction if you eat foods that are
12 high in tyramine during your treatment with phenelzine [an
13 MAOI, brand name: “Nardil”]. Tyramine is found in many
14 foods, including meat, poultry, fish, or cheese that has been
15 smoked, aged, improperly stored, or spoiled; certain fruits,
16 vegetables, and beans; alcoholic beverages; and yeast products
17 that have fermented. Your doctor or dietitian will tell you which
18 foods you must avoid completely, and which foods you may eat
19 in small amounts. You should also avoid foods and drinks that
20 contain caffeine during your treatment with phenelzine. Follow
21 these directions carefully. Ask your doctor or dietitian if you
22 have any questions about what you may eat and drink during
23 your treatment.

24 26. Even small amounts of yohimbe may cause high blood pressure.²

25 ² *Yohimbe* from The National Institute of Health
26 (*available at*
27 <http://www.nlm.nih.gov/medlineplus/druginfo/natural/759.html>)
28

1 27. Yohimbe itself elevates normal blood pressure levels, and NBI fails to
2 warn consumers that, similar to MAOIs, the consumption of yohimbe with
3 common foods heavy in tyramine presents the risk of hypertension and possibly
4 even stroke or death; and such foods should be avoided when taking yohimbe.

5 28. Of significant concern is a study published in 2008, which in a
6 yearlong surveillance study of dietary supplement-related poison control center
7 calls, found that yohimbe products accounted for almost a fifth of all exposures to
8 dietary supplements that led to negative symptoms, despite being a very small
9 percentage of dietary supplement sales.³

10 29. These symptoms include: anxiety, tremulousness, diaphoresis,
11 hypertension, palpitations, headache, chest pain, tachycardia, shortness of breath,
12 stroke, dizziness, agitation, and abnormally dilated pupils.

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26 ³ Haller CA, *et al. Dietary Supplement Adverse Events: Report of a One-*
27 *Year Poison Center Surveillance Project*, 4(2) *Journal of Medical Toxicology*. 84-
28 92 (2008).

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3 **Specific Misrepresentations and Deceptive Acts**

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Front Label:

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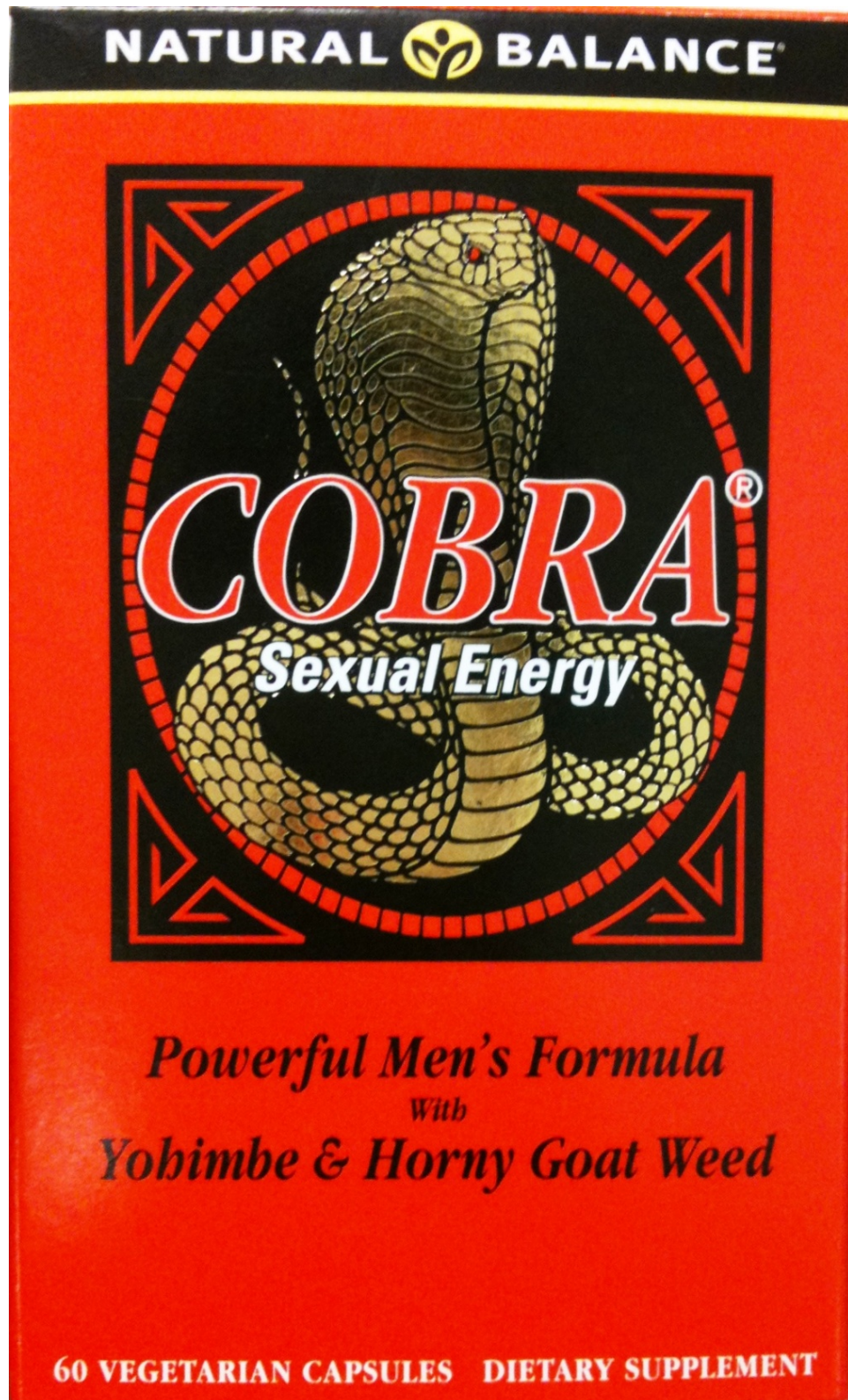
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30. **Misleading supplement name:** NBI prominently labels its product under the name “Cobra Sexual Energy” despite that there is no evidence it contributes to human sexual energy.

31. **Misleading sub-headings:** The front of the Cobra label features the misleading sub-heading “Powerful Men’s Formula,” suggesting that, not only does its proprietary blend work in the way advertised, but has a particularly strong, or extra, “powerful” effect.

32. The Cobra label also features the misleading sub-heading, in large bolded and italicized words, “with Yohimbe & Horny Goat Weed.”

33. This claim suggests these two proprietary blend ingredients are present in the amounts necessary to be effective and are effective in the manner in which NBI presents them in Cobra.

34. The combined effect of these misleading statements is that NBI falsely suggests there is a scientific and/or research basis for Cobra's claims.

35. Neither Yohimbe nor Horny Goat Weed, however, has ever been shown in any scientific study to improve human “sexual energy.”

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Back Label:

SUGGESTED USE: Take one or two capsules as needed up to two times a day.

WARNING: Contraindicated in existing liver and kidney disorders and in chronic inflammation of the prostate gland or for individuals who suffer from hypertension or any heart conditions; not recommended for long term use; should not be taken with MAO inhibiting antidepressant medications. Not recommended for use by persons under the age of 18.

Supplement Facts

Serving Size 2 Capsules
Servings Per Container 30

	Amount Per Serving	% Daily Value
Total Carbohydrate	<1g	<1% †
Proprietary Blend	986 mg	*
Kola Nut (Cola nitida) (seed extract)(contains caffeine)		
Yohimbe (bark extract)		
Horny Goat Weed (Epimedium spp.)(aerial)		
Oat Straw (aerial extract)		
Nettle (leaf extract)		
Catuaba (bark)		
Mulra Puama (root)		
Korean Ginseng (root)		
Damiana (leaf)		
Saw Palmetto (fruit)		

*Daily Value not established.

† Percent Daily Value based on a 2,000 calorie diet.

Other ingredients: Vegetable Cellulose Capsule, Maltodextrin, Rice Flour and Magnesium Stearate.

Manufactured for Natural Balance
 Castle Rock, CO 80109
 800-672-8421
 www.naturalbalance.com



**NATURAL
BALANCE**

Side Label:

Perform Your Best with Animal Magnetism

For centuries, men have used various herbs, roots and “aphrodisiac” plants to enhance their sexuality and improve their performance. Cobra blends exotic herbs from the Orient, South Pacific, and Africa.

Discover Natural Balance

For over 20 years Natural Balance has energized people's health and well-being by offering specialty supplements that work. Scientifically blending select, high-quality herbs into proprietary formulas is our art. Helping people live healthier, more enjoyable lives is our passion.

36. **Misleading first side label heading:** The side label of Cobra

1 prominently claims, “Perform Your Best with Animal Magnetism,” and states in a
2 paragraph below the heading, “For centuries, men have used various herbs, roots
3 and ‘aphrodisiac’ plants to enhance their sexuality and improve their performance.
4 Cobra blends exotic herbs from the Orient, South Pacific, and Africa.”

5 37. Such claims, both alone and even more so taken together with the rest
6 of the label, convey a misleading impression of the product’s purported benefits,
7 implying that the “exotic herbs” in NBI’s proprietary blend are not only similar to
8 those that have been used for “centuries” around the world but have the effects of
9 “enhance[d] sexuality” and “improve[d] performance.”

10 38. **Misleading second side label heading:** The second section of this
11 side of the Cobra label prominently claims “Discover Natural Balance” in large,
12 bolded, italicized font. NBI further claims that “Scientifically blending select,
13 high-quality herbs into proprietary formulas is our art.”

14 39. This statement implies that the ingredients which constitute NBI’s
15 Cobra “proprietary” blend have been chosen based on scientific research, in order
16 to achieve the product’s advertised effects. Such an implication is false and the
17 statement, both alone and taken together with the rest of the package, is
18 misleading.

19 40. Also beneath this large heading, the Cobra side label states: “For over
20 20 years Natural Balance has energized people’s health and well-being by offering
21 specialty supplements that work.”

22 41. This sentence makes the dual claim that Natural Balance has
23 historically contributed to people’s overall “health” and “well-being” and that
24 Natural Balance “energize[s]” consumers. The pervasive context of NBI’s Cobra
25 label promotes the idea that Cobra is healthy to consume, despite that there is
26 significant evidence Cobra poses serious health risks to consumers, and despite
27 that Cobra’s purported function is to promote “sexual energy.”

28 42. These express claims therefore are both false and misleading.

1 43. The same claim asserts NBI “offer[s] specialty supplements that
2 work.” Unfortunately for consumers, at least as regards NBI’s product Cobra, the
3 company fails even this modest claim. “Cobra Sexual Energy” is little more than
4 aggressively advertised snake oil.

5 44. Further, this part of the Cobra label concludes with the claim,
6 “Helping people live healthier, more enjoyable lives is our passion.”

7 45. This claim misleads consumers to believe that, because of NBI’s
8 stated “passion” for helping people lead healthier lives, Cobra will contribute to a
9 “healthier” and more “enjoyable” life.

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28 Side Label:



46. **Misleading side label heading:** The side label of Cobra states in large

1 type: “Take Virility to the Max!”

2 47. “Virility” means sexual energy and vigor, and in the context of NBI’s
3 product, misleadingly implies Cobra Sexual Energy delivers the advertised result
4 with “max[imum]” effectiveness.

5 48. There is no scientific evidence that the ingredients at the levels found
6 in Cobra, individually or in any combination, provide sexual energy for the human
7 body.

8 49. **Misleading ingredient sub-headings:** The side label of Cobra also
9 lists several claims related to various ingredients in its proprietary blend:

10 50. **“Yohimbe Bark Extract”:** Under this sub-heading NBI’s Cobra label
11 states: “Legendary herb from Africa that contains Yohimbine. Yohimbe is intended
12 to provide nutritive support for healthy blood flow.”

13 51. While some studies possibly support “increased blood flow,” stating
14 them in the context of sexual energy is misleading. The increase in blood flow NBI
15 refers to has not been shown by any scientific study to affect human sexual energy.

16 52. For example, the NIH has stated that Yohimbe is possibly helpful only
17 for erectile dysfunction and sexual problems arising from certain medications, but
18 cautions that Yohimbe has not been adequately researched to justify being
19 described as having these or any other sexual benefits.⁴

20 53. Extracts from this bark, aside from lacking proof of the healthful
21 benefits claimed NBI’s Cobra label, present the added risks described above (such
22 as risk of hypertension, stroke, and manic-depressive episodes), which are not
23 indicated on NBI’s label.

24 54. **“Horny Goat Weed”:** Under this sub-heading NBI’s Cobra label

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26 ⁴ *Yohimbe* from The National Institute of Health
27 (available at
28 <http://www.nlm.nih.gov/medlineplus/druginfo/natural/759.html>)

1 states: “From China, it is thought to support sensitivity in the sensory nerves.”

2 55. There are no scientific studies substantiating this claim and stating
3 such a claim in the context of sexual energy is misleading.

4 56. **“Muir Puama”**: Under this sub-heading NBI’s Cobra label states:
5 “Stimulating Brazilian herb known as ‘potency wood’.”

6 57. There are no scientific studies substantiating that extracts from this
7 herb improve human sexual energy. This claim is misleading as stated in the
8 overall context of NBI’s Cobra label.

9 58. **“Korean Ginseng”**: Under this sub-heading NBI’s Cobra label states:
10 “Most famous of all performance enhancing herbs. Ginseng is prized in the
11 Orient.”

12 59. There are no scientific studies that demonstrate extracts from this herb
13 “enhances” sexual performance or energy.

14 60. The NIH has also cautioned that “ginseng may lower levels of blood
15 sugar”; and that “this effect may be seen more in people with diabetes.”⁵
16 Therefore, NBI’s Cobra presents an additional risk to the consumer in the absence
17 of any such warning on its label, without any of the offsetting benefits that it
18 claims to possess.

19 61. The NIH has also warned that yohimbe also presents risks for those
20 who suffer from diabetes; thus, Cobra presents a double risk for such consumers
21 without any warning on its label.

22 62. **“Saw Palmetto”**: Under this sub-heading NBI’s Cobra label states:
23 “North American herb known for its reputed ability to help promote prostate
24 function.”

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26 _____
27 ⁵ *Herbs at a Glance: Asian Ginseng* from The National Institute of Health
28 (available at <http://nccam.nih.gov/health/asianginseng/>)

63. While naturally-occurring phytosterol compounds⁶ found in nearly all plants, including Saw Palmetto, have been shown to present certain specific benefits for sufferers of benign prostate hyperplasia,⁷ no scientific study has ever shown that phytosterols “promote healthy prostate function.”

64. Furthermore, the NIH has warned that the Cobra ingredient yohimbe “might make the symptoms of BPH (benign prostatic hyperplasia) worse” negating any such implied benefit for the prostate.⁸

65. Such a suggestion is not only false, but also misleading in the context of other claims made throughout NBI’s Cobra label.

66. A reasonable consumer would assume significant improvement of prostate function might also improve “sexual energy” or performance.

67. Further, neither phytosterols nor Saw Palmetto extracts have ever been shown by any scientific study to affect human sexual energy levels.

Other Ingredients Listed Under NBI’s Proprietary Blend

68. **“Kola Nut (seed extract)”**: There are no scientific studies showing that seed extracts from the Kola nut, or any other such extract, improve “sexual energy” levels.

69. **“Oat Straw (aerial extract)”**: There are no scientific studies showing that “aerial” extracts from oat straw, or any other such extract, improve “sexual energy” levels.

⁶ Plant forms of cholesterol.

⁷ A non-cancerous enlargement of the prostate. *See e.g., Berges RR, et al. Randomised, Placebo-Controlled, Double-Blind Clinical Trial of beta-Sitosterol in Patients with Benign Prostatic Hyperplasia. beta-Sitosterol Study Group, 345(8964) Lancet 1529-32 (1995).*

⁸ *Yohimbe* from The National Institute of Health
(available at
<http://www.nlm.nih.gov/medlineplus/druginfo/natural/759.html>)

1 70. **“Nettle (leaf extract)”**: There are no scientific studies that
2 demonstrate extracts from any nettle plant improve “sexual energy” levels.

3 71. **“Catuaba (bark)”**: There are no scientific studies that demonstrate
4 extracts from Catuaba bark improve “sexual energy” levels.

5 72. **“Damiana (leaf)”**: Also known as *tunera diffusa*, extracts from this
6 plant have been shown to increase the sexual activity and copulation rate of rats in
7 one study.

8 73. However, rats exhibiting this gain were at the outset “sexually
9 sluggish” before Damiana extracts were administered in solution. Rats exhibiting
10 normal sexual behavior, however, showed no such benefit when given the extract
11 as compared to a control group. The hypothesized mechanisms by which Damiana
12 extracts are purported to affect “sexually sluggish” rats did appear to be present in
13 healthy rats:

14 So, from our present data, it would appear that the plant extracts
15 used in this study, which selectively improve the sexual
16 behavior of sluggish/impotent rats, *while being ineffective in*
17 *potent rats*, might act mainly by increasing central
18 noradrenergic and dopaminergic tone, and possibly (indirectly)
19 oxytocinergic transmission.⁹

20 74. No human study, however, has replicated this finding in the eleven
21 years since this study was performed. Accordingly, claims as to the possible effects
22 and benefits of Damiana leaf extracts on human beings (let alone human beings not
23 suffering from the same issues as the “sluggish” rats) are misleading.

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25
26 ⁹ Arletti R, *et al. Stimulating Property of Tunera Diffusa and Pfaffia*
27 *Paniculata Extracts on the Sexual Behavior of Male Rats*, 143 *Pharmacology* 15-19
28 (1999) (emphasis added).

RELIANCE AND INJURY

75. When purchasing Cobra, Plaintiff was seeking a product that had the qualities described on Cobra's label.

76. Plaintiff read and relied on the following deceptive NBI claims concerning Cobra:

- (a) the product's name, "Cobra Sexual Energy";
- (b) "Powerful Men's Formula";
- (c) "with Yohimbe & Horny Goat Weed";
- (d) "Perform Your Best with Animal Magnetism";
- (e) "'adphrodiasiac' plants to enhance...sexual energy";
- (f) "improve...performance";
- (g) "Scientifically blending select, high-quality herbs";
- (h) "Natural Balance has energized people's health and well-being";
- (i) "offering specialty supplements that work";
- (j) "Helping people live healthier, more enjoyable lives";
- (k) "proprietary formulas";
- (l) "Take Virility to the Max!"; and
- (m) "Most famous of all performance enhancing herbs";

77. Plaintiff believed Cobra had the qualities she sought based on its deceptive labeling, but the product was actually unsatisfactory to Plaintiff for the reasons described herein, *i.e.*, there is no evidence the ingredients in Cobra present the claimed benefits, and the ingredients may actually impose an unreasonable risk of danger.

78. Cobra costs more than similar products without misleading labeling, and would have cost less absent the false and misleading statements.

79. Plaintiff paid more for Cobra, and would have been willing to pay less or unwilling to purchase the product at all, absent the false and misleading labeling complained of herein. Plaintiff would not have purchased Cobra absent these

1 claims and advertisements.

2 80. For these reasons, Cobra was worth less than what Plaintiff paid for it.

3 81. Instead of receiving a product that had actual and substantiated
4 healthful or other beneficial qualities, the product Plaintiff received was one which
5 does not provide the claimed benefits.

6 82. Plaintiff lost money as a result of NBI's deceptive claims and
7 practices in that she did not receive what she paid for when purchasing Cobra.

8 83. Plaintiff altered her position to her detriment and suffered damages in
9 an amount equal to the amount she paid for Cobra.

10
11 **CLASS ACTION ALLEGATIONS**

12 84. Plaintiff brings this action on behalf of herself and all others similarly
13 situated (the "Class") in accordance with Rule 23 of the Federal Rules of Civil
14 Procedure.

15 85. The Class is defined as:

16 All persons (excluding officers, directors, and employees of
17 NBI) who purchased, on or after November 30, 2006, NBI's
18 Cobra in the United States for their own use rather than resale
19 or distribution.

20 86. Questions of law and fact common to Plaintiff and the Class include:

- 21 a. Whether NBI contributed to, committed, and/or is responsible
22 for the conduct alleged herein;
23 b. Whether NBI's conduct constitutes the violations of law alleged
24 herein;
25 c. Whether NBI acted willfully, recklessly, negligently, or with
26 gross negligence in the violations of law alleged herein; and
27 d. Whether Class members are entitled to compensatory,
28 injunctive, and other equitable relief.

1 87. By purchasing Cobra, all Class members were subjected to the same
2 wrongful conduct.

3 88. Absent NBI's deceptive claims, Plaintiff and Class members would
4 not have purchased Cobra.

5 89. Plaintiff's claims are typical of the Class's claims. Plaintiff will fairly
6 and adequately protect the interests of the Class, has no interests that are
7 incompatible with the interests of the Class, and has retained counsel competent
8 and experienced in class litigation.

9 90. The Class is sufficiently numerous, as it includes thousands of
10 individuals who purchased Cobra throughout the United States during the Class
11 Period.

12 91. Class representation is superior to other options for the resolution of
13 the controversy. The relief sought for each Class member is small. Absent the
14 availability of class action procedures, it would be infeasible for Class members to
15 redress the wrongs done to them.

16 92. NBI has acted on grounds applicable to the Class, thereby making
17 appropriate final injunctive relief or declaratory relief concerning the Class as a
18 whole.

19 93. Questions of law and fact common to the Class predominate over any
20 questions affecting only individual members.

21 94. Class treatment is appropriate under FRCP 23(a) and both 23(b)(2)
22 and 23(b)(3). Plaintiff does not contemplate class notice if the Class is certified
23 under FRCP 23(b)(2), which does not require notice, and notice via publication if
24 the Class is certified under FRCP 23(b)(3) or if the Court determines Class notice
25 is required notwithstanding that notice is not required under FRCP 23(b)(2).
26 Plaintiff will, if notice is required, confer with Defendant and seek to present the
27 Court with a stipulation and proposed order on the details of a Class notice plan.
28

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law,

Cal. Bus. & Prof. Code § 17200 *et seq.*,

95. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

96. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business act or practice.”

97. The acts, omissions, misrepresentations, practices, and non-disclosures of NBI as alleged herein constitute “unlawful” business acts and practices in that NBI’s conduct violates the False Advertising Law, the Consumer Legal Remedies Act, and the Lanham Act.

98. NBI’s conduct is further “unlawful” because it violates the Federal Food, Drug, and Cosmetic Act and its implementing regulations in the following ways:

(1) NBI’s deceptive statements violate 21 U.S.C. § 343(a), which deems food (including nutritional supplements) misbranded when the label contains a statement that is “false or misleading in any particular”;

(2) NBI’s deceptive statements violate 21 C.F.R. § 101.14(b)(3)(i), which mandates “substances” in dietary supplements consumed must contribute and retain “nutritive value,” as defined under 21 C.F.R. § 101.14(a)(2)(3) when consumed at levels necessary to justify a claim.

99. NBI’s conduct is further “unlawful” because it violates The California Sherman Food, Drug, and Cosmetic Law, which incorporates the provisions of the Federal Food, Drug and Cosmetic Act.

100. The acts, omissions, misrepresentations, practices, and non-disclosures of NBI as alleged herein also constitute “unfair” business acts and practices under the UCL in that NBI’s conduct is immoral, unscrupulous, and offends public policy. Further, the gravity of NBI’s conduct outweighs any conceivable benefit of such conduct.

101. The acts, omissions, misrepresentations, practices, and non-disclosures of NBI as alleged herein constitute “fraudulent” business acts and practices under the UCL in that NBI’s claims are false, misleading, and have a tendency to deceive the Class and the general public.

102. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining NBI from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

103. Plaintiff further seeks an order for the disgorgement and restitution of all monies from the sale of NBI Cobra which were acquired through acts of unlawful, unfair, and/or fraudulent competition.

SECOND CAUSE OF ACTION

Violations of the False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*

104. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

105. In violation of Cal. Bus. & Prof. Code § 17500 *et seq.*, the advertisements, labeling, policies, acts, and practices described herein were designed to, and did, result in the purchase and use of Cobra.

106. NBI knew and reasonably should have known that the labels on NBI Cobra were untrue and/or misleading.

107. As a result, Plaintiff, the Class, and the general public are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which NBI was unjustly enriched.

THIRD CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code § 1750 *et seq.*

108. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

109. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

110. NBI's false and misleading labeling and other policies, acts, and practices were designed to, and did, induce the purchase and use of NBI Cobra for personal, family, or household purposes by class members, and violated and continues to violate the following sections of the CLRA:

- a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.
- b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.
- c. § 1770(a)(9): advertising goods with intent not to sell them as advertised.
- d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

111. As a result, Plaintiff and the Class have suffered irreparable harm, seek, and are entitled to, actual damages, punitive damages, injunctive relief and restitution.

112. The conduct described herein by NBI was long-standing, continuing even after Plaintiff demanded the conduct cease in her CLRA letter, was done for profit as a deliberate corporate policy rather than an isolated incident, and was morally wrong, fraudulent, callous, and oppressive.

113. In compliance with Civ. Code § 1782, Plaintiff sent written notice to NBI of her claims on Oct. 13, 2010, delivered on Oct. 18, 2010, and more than 30 days before seeking damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for judgment and relief against Defendant as follows:

A. Declaring this action to be a proper class action and appointing undersigned counsel as class counsel;

B. An Order requiring NBI to bear the cost of class notice;

C. An Order compelling NBI to conduct a corrective advertising campaign;

D. An Order requiring NBI to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice;

E. An Order compelling NBI to destroy all misleading and deceptive advertising materials and product labels;

F. An Order requiring NBI to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of the CLRA, plus pre-and post-judgment interest thereon;

G. Actual damages under the CLRA;

H. Punitive damages under the CLRA;

I. Costs, expenses, and reasonable attorneys' fees;

J. Any other and further relief the Court deems necessary, just, or proper.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

1
2 DATED: November 30, 2010

Respectfully Submitted,

3 /s/ Gregory S. Weston

4 **THE WESTON FIRM**

GREGORY S. WESTON

JACK FITZGERALD

888 Turquoise Street

San Diego, CA 92109

Telephone: 858 488 1672

Facsimile: 480 247 4553

9 Counsel for Plaintiff and
10 the Proposed Class

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Eileen Peviani, on behalf of herself and all others similarly situated (b) County of Residence of First Listed Plaintiff <u>Orange</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) The Weston Firm, Gregory S. Weston and Jack Fitzgerald, 888 Turquoise Street, San Diego, CA 92109, 858 466 1672	DEFENDANTS Natural Balance, Inc. County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) '10CV2451 H BGS
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 33%;">PTF DEF</td> <td style="width: 33%;">PTF DEF</td> </tr> <tr> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td><input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF	PTF DEF	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	<input type="checkbox"/> 6 <input type="checkbox"/> 6
Citizen of This State	PTF DEF	PTF DEF											
<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4 <input type="checkbox"/> 4											
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5											
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	<input type="checkbox"/> 6 <input type="checkbox"/> 6											

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FINANCIAL <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. § 1332(d)(2)</u> Brief description of cause: <u>Unfair Competition</u>
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VII. REQUESTED IN COMPLAINT:	<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ <u>to be determined at trial</u> CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE <u>11/30/2010</u>	SIGNATURE OF ATTORNEY OF RECORD <u>Gregory S. Weston</u>
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FOR OFFICE USE ONLY	RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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